

Second six-monthly review of progress to implement the *Getting the Groundwork Right* report

Anna Cronin

Commissioner for Better Regulation & Red Tape Commissioner

Background

You asked me to continue my periodic reviews of the implementation progress of the *Getting the Groundwork Right* report (the Report).

This review focuses on implementation since August 2018. To complete this short review, I have consulted with four industry peak bodies and senior staff from the Resources Branch within the Department of Jobs, Precincts and Regions, including Earth Resources Regulation (ERR).

Key points

Good news

My consultations with industry indicated that they have seen some improvements in ERR's operations. Generally, they reported a more positive and constructive relationship with ERR and noted, in particular, improvements in industry engagement. This point is illustrated by recent feedback I received from a senior executive in the extractives industry:

“John [Krbaleski] and his department are focused on ensuring the approvals of Extractive Industry applications are paramount to ensure the State Government's infrastructure projects are properly and competitively supplied”

Since August 2018, ERR has implemented the following reforms:

- **The approvals backlog has been significantly reduced** – 100 per cent of work plans for new quarries and mines and variations were within statutory timeframes (as at 31 March 2019). This is a 'work in progress' and the critical importance of making sure that the approvals system is working effectively and efficiently cannot be overstated.
- **New guidelines for the preparation of work plans and variations for the exploration, mining and extractives sectors were released** – the guidelines provide clearer information to industry on how to prepare work plans and variations and set out the new notification pathway. These guidelines provide clarity on the regulator's expectations and help achieve consistency and transparency in the assessment and approval of work plans.
- **A new notification approvals pathway was introduced** – a quicker and cheaper approvals pathway has been introduced to reduce assessment times for work plan changes for existing quarries and mines.
 - Overall, industry has welcomed this change and has reported improvements in approvals times as a result.

For Official Use Only

- PwC's preliminary evaluation of the notification pathway and found it is quicker and cheaper for industry. It observed that, based on initial feedback provided by industry, there appear to be substantial time/cost savings associated with the new notification pathway. Twenty notifications for works changes (five mines and 15 quarries) have been accepted by ERR as of 29 May 2019.
- **Held industry sessions on the new work plan guidelines and notification pathway** – around 200 people attended industry sessions on the new guidelines. The sessions were well received by industry.
- **Developed 68 standard operating procedures (SoPs)** – ERR is in the process of implementing SoPs that will give staff clear guidance on all critical processes (including approvals, licensing and compliance). The SoPs should lead to more efficient and consistent regulatory decisions. ERR's recent action to develop operating policies, such as for fit and proper persons, will help to set a firmer foundation for implementing the SoPs.
- **Launched a redeveloped website** – this responds to a recommendation in my initial report. The redeveloped website is a significant boost in ERR's communications and improves the presentation of approvals information for industry and the community.

One of the important initiatives recommended in the *Getting the Groundwork Right* report was a Joint Ministerial Statement (JMS) to clarify roles in regard to planning. The Ministers for Planning and Resources released the JMS in August 2018 for the extractives sector. It sets out six focus areas where government commits to deliver regulatory improvements for the sector. The JMS included a project hotlist that identified quarries that would be given priority planning consideration. ERR has completed four full work plan approvals and four statutory endorsements (pending planning permits) for the 11 quarries on the hotlist. The applications for the other three quarries on the hotlist are currently with the applicants to either prepare a work plan or seek planning approval.

Progress being made

In terms of completing the implementation of the Report's recommendations, ERR has several ongoing projects that need to be successfully delivered if it is to sustain and build on the improvements it has made.

- **Evaluation of the work plan and notification guidelines**
 - These guidelines are scheduled to be evaluated in June 2019. Industry has raised several areas of concern which ERR should consider in the evaluation:
 - ERR should explore whether it is necessary for notification pathway applicants to seek written advice from local government planning departments prior to submitting a notification application. Industry told me they have encountered difficulties with this step and it has delayed their applications.
 - Smaller operators may find the risk assessment process in the guidelines too onerous. ERR should consider whether it can be made more proportionate.
 - ERR has agreed to work with industry to investigate a model where operators, in specific circumstances, could provide a notification without any ERR prior assessment. This will further streamline the process, while still allowing the regulator to adequately manage risk through an 'ex-post' assessment mechanism.

For Official Use Only

This work should start soon, and industry is keen to better understand how it can be involved.

- **Redevelop the Resource Rights Allocation and Management (RRAM) system**
 - Industry reported to me that while it has noticed some improvements from the ‘quick wins’ RRAM project, ERR needs to ensure that industry is informed about its plans for RRAM.
 - ERR has now commenced the redevelopment of RRAM. An immediate focus is to align the system with the new mineral regulations that will commence on 1 July 2019.
 - Industry engagement is critical during this project to make sure the redeveloped RRAM meets users’ needs. ERR has committed to monthly end-users workshops to seek feedback from industry. It recently held a session covering proposed changes to the licence application process. It is important that RRAM redevelopment is a priority in the Department’s IT strategy.
 - Involvement of key ERR staff who can articulate the business requirements to the RRAM project team will be key to success.
- **Further work is required to give effect to the JMS**
 - Industry expressed concerns about the implementation of the JMS, in particular that the Planning Practice Note delivered by DELWP did not meet their expectations. DELWP is continuing to work on the recommendations of the JMS with its next phase being the delivery of legislative and Victorian planning policy changes. DELWP has advised me that industry will be consulted as this work progresses.
- **A carefully structured change management plan is essential to recognise the value of the SoPs**
 - While the SoPs have been developed, only nine have been implemented so far. How they are implemented will determine their usefulness as a tool to improve regulatory consistency. To ensure that ERR staff see value in the new approach, the following activities should accompany the release of the SoPs:
 - a launch of the SoPs by senior ERR staff
 - small working group sessions with staff to ‘calibrate’ decision making under the SoPs
 - six-monthly reviews of the effectiveness of each SoP.
 - If operating improvements at ERR are to be delivered, it is vital that the SoPs are implemented as soon as possible.
 - As well as endorsing the SoPs, it is important that ERR leadership continues to focus on creating a supporting culture that empowers ERR staff to make decisions, including making it clear when they need to escalate issues to a manager.
- **Legislative change agenda**
 - In line with my Report’s recommendations about the need for legislative change in the longer-term, the Earth Resources Policy & Legislation team has started scoping legislative changes to the *Mineral Resources (Sustainable Development) Act 1990*.
 - An initial legislative reform priority is to explore the alignment between land use planning legislation and the MRSD Act to reduce the time it takes for regulatory approvals to open a new mine or quarry.
 - Progressive implementation of new regulations is creating a complex operating environment for ERR, which has a flow-on effect to SoPs, guidelines and the website.

- **Industry familiarisation**
 - My report highlighted the importance of ERR staff being familiar with industry. My consultations with industry indicate that further work is required as a priority to increase industry knowledge within ERR.
 - It is pleasing to note that ERR has now committed to a program of quarterly site visits so that all staff visit a mine and quarry annually. Priority should be given to new starters and those who have not yet been onsite. ERR will also invite staff from other relevant agencies (such as DELWP) to these visits to increase industry exposure across government. Other steps to address this should include practical training about mining and quarrying operations to increase industry familiarisation.
- **Develop an ERR stakeholder charter**
 - As noted above, ERR engagement with industry has improved significantly. To consolidate these improvements, and build on them, ERR should consider working with staff to develop a charter, similar to that recently developed by the Essential Services Commission (ESC). Such a charter would set out what stakeholders can expect when interacting with ERR. ERR staff should be involved in its design to maximise their sense of ownership.
 - The ESC's charter has considerably improved its staff's understanding of its role and stakeholder expectations of the regulator.
- **The 2019 Victorian State Budget will support the implementation of the Extractive Resources Strategy**
 - The 2019 budget includes \$13.2 million to support the delivery of key actions from Victoria's first Extractive Resources Strategy. The funding will enable two new local government areas to be included in the pilot for the Strategic Extractive Resource Areas (SERAs). Industry is delighted with this announcement. The pilot seeks to protect future quarry sites from development to secure future supply of its materials.
 - Commenting on the budget announcement, Cement Concrete & Aggregates Australia's State Director for Victoria and Tasmania, Brian Hauser said: "this is a tremendous outcome for the quarry sector in Victoria as the Government continues to invest in improving the capability of Earth Resources Regulation to approve new materials supply and for the Government to continue to develop Strategic Extractive Resources Areas (SERAs)".
- **My report recommended an investment support role for Invest Assist.** Given the critical importance of ensuring mining and quarrying projects move smoothly through the approvals process, Invest Assist should have a coordinating role for significant resource projects, to facilitate approvals across the multiple regulators.

Conclusion

ERR should be commended for the significant number of changes it has successfully implemented from the *Getting the Groundwork Right* report. Many of these changes have led to noticeable improvements for industry. The support of the Regulatory Transition Taskforce has been critical to deliver these improvements.

With several major projects still underway, it is imperative that ERR now consolidates its efforts to cement the gains it has achieved, and maintain the momentum for reform.

For Official Use Only

The key priorities for urgent attention include:

1. Implementing the SoPs.
2. Reviewing the notification process to determine whether:
 - a. it is necessary for applicants to seek written advice from local government planning departments prior to submitting a notification application
 - b. it can be made automatic.
3. Liaising with DELWP at senior levels to identify what can be done to progress the delivery of the commitments in the Joint Ministerial Statement.
4. Delivering on industry familiarisation activities.

It is vital that the progress made by ERR doesn't stall. Its regulatory activities are critical to meeting Victoria's infrastructure agenda. The Department of Jobs, Precincts and Regions should ensure that ERR's future capability is sufficient to deliver its core regulatory functions.